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Current Topics.

Major Lionel Wigram.

THE death of Major LIONEL WIGRAM early this month while leading Italian irregulars in a night attack on the Eighth Army Front is one of the saddest losses of this war. This distinguished solicitor and soldier had, at the early age of thirty-seven, achieved brilliant successes in his two careers. Already one of the outstanding figures of the legal profession, at the outbreak of the war he was a captain in the London Territorials. After Dunkirk, he was inspired by a memorandum on tactics written by General ALEXANDER, and organised as commandant the first divisional battle school to be started in the British Army. It was he who introduced the Army to the realistic battle practice which has since become an integral part of modern military training. The book on battle drill which he wrote has now become the standard manual on the subject. When General PAGET, then Commander-in-Chief, decided to provide every division with its own battle school, WIGRAM was appointed as commandant of the G.H.Q. school, with the rank of lieutenant-colonel. Refusing to go to Canada and India, he went to Sicily as an observer, and set himself the task of training Italian irregulars. For this purpose he learned Italian, although previously he did not know a word of that language. It was at that stage that he voluntarily reverted to the rank of major. One of the officers who served with him wrote that by his ability to speak Italian and to see the point of view of the men he led, he made himself their personal champion and hero, and they felt his loss as a personal loss. He was, the officer wrote, a man of exceptional courage with absolutely no thought of personal danger. There is no doubt that his amazing success at whatever he undertook indicated something in him that was akin to genius. At a time when there was every reason for despairing thoughts, he devoted himself to the perfection of a new offensive technique which revolutionised military training and will be a tremendous factor in the coming victory. A personality of his force must needs have contributed equally great services to his country if he had lived. His destiny has been to die in battle, and his country mourns his passing. Our deepest sympathy goes out to his family in their sorrow.

Panel Lawyers.

IN some legal circles recently, following parallel lines of thought to those which inspired the Beveridge Report and the recent Government National Health Service Plan, schemes have been mooted for the establishment of a scheme for providing a national legal service. Mr. DOUGLAS HOUGHTON, the well-known broadcaster on legal subjects affecting the everyday rights of the working classes, in an article in *The Daily Herald* of 4th February, 1944, follows out these lines of thought, with special reference to what he calls the "means test" applied by the Poor Persons Rules for obtaining legal guidance. In the last two years, Mr. HOUGHTON says, he has had over 10,000 letters from folk seeking help. One-third of them were in doubts and difficulties thrown up by the Rent Restriction Acts. The lawyer, he writes, "belongs to a powerful professional society and usually charges his trade union rate for the job." In view of this, the Poor Man's Lawyer service, well-intentioned and worthy as it is, cannot be accepted as a solution of the problem. It is undeniable that, as Mr. HOUGHTON says, "in an enlightened democracy citizens are entitled to know the law, and to be protected by the law, without suffering financial hardship or indignity." He quotes from a statement by a member of Parliament "that it should not be impossible to add to the system of social security a scheme of legal assistance for those who need it, based on a sliding scale, with adequate safeguards for those against whom litigation is brought, and for the preservation of the independence of barristers and solicitors." The writer adds: "In these days of the extension of the principle of collective social security . . . some scheme of panel lawyers is an obvious suggestion . . . Many of the traditional privileges and vested interests of the legal profession stand in the way of overhaul." The suggestion seems to be that the Bar Council and The Law Society, the two most important "vested interests" in the legal profession, stand in the way of reform. Nothing could be more untrue, and conveyed as it has been to a large public, no statement could be more unjust. In their efforts to provide free legal aid at considerable expense to themselves, corporatively and individually, members of the legal profession have in many important respects been in advance of all other professions. Should Parliament in its wisdom consider that a panel system is as appropriate to the legal profession as it is to the medical profession, in spite of the different demands on the two professions and the different public interests involved, there could and would be no obstructionism on the part of professional bodies. But the adoption of this plan or any other new plan for the legal profession has hardly yet got past the columns of the press, and the most that can be said for it at present is that it deserves closer examination than it has yet received. What is quite certain is that no good will come from unprovoked attacks on professional organisations which have done so much to alleviate the situation.

Finance Act Problems.

AFTER representations from the Council of The Law Society and full discussions with Sir RANDLE HOLME and Mr. ARTHUR FFORDE on behalf of the Council, the Commissioners of Inland Revenue have given their views on the questions raised. These are published in the February issue of *The Law Society's Gazette*. The Council pointed out that the result of ss. 26 and 27 of the Finance Act, 1941, is that it is a matter of chance in many cases whether a company director's fees are free of tax or not, the chance depending on whether the director happened to retire by rotation at the material moment. The Commissioners do not consider it necessary that the section should be altered, as they suggest that a company may deal with the matter, if it wishes, by a suitable amendment of its articles of association. The fact that this is not always a possible or convenient course was brought to the Commissioners' notice, but did not alter their expressed view. Another matter brought to the notice of the Commissioners by the Council was the inequitable position resulting from the decision in *Bryan* v. *Cassin* (1942), 2 All E.R. 262. It was held in that case that the apportioned part of an annuity to the date of the deceased annuitant's death was income of the executors, and not of the deceased, and could not therefore be the subject of a claim for repayment of income tax in the name of the deceased. As there was no other person who could make a claim, this, as pointed out by the court, became a windfall to the Revenue. The Commissioners thought that the case was exceptional, as the estate was insolvent. If the apportioned part of the annuity had fallen into a residuary estate bequeathed absolutely, it would, under s. 31 of the Finance Act, 1938, have become for income tax purposes income of the residuary legatee and would have become available to him for the purpose of a repayment claim. Other questions were raised by the Council under ss. 46–59 and Sched. VII of the Finance Act, 1940. The Council queried the effectiveness of s. 56 (1) where the consideration for a transfer of property to a company to which these sections apply is payable by instalments which thereby become "periodical payments" and benefits accruing to the deceased. The Commissioners replied that it is their practice to exclude the instalments from the computation of benefits in any case which satisfies the tests of the subsection. A further query related to assets distributed within three years of the death in satisfaction of rights attaching to debentures which are taken into account in computing the charge of duty under s. 46 and to the inequity resulting where the debenture-holder is not connected with the testator. According to the Revenue's reply, Sched. VII, para. 3,

operates so that the proportion of the deceased's benefits to the company's net income is reduced for the purposes of the calculation by the addition to the company's actual income of an amount representing a notional income from the assets distributed. The Commissioners also stated that in any proper case they would exercise their power under s. 35 of the Inland Revenue Regulation Act, 1890, to mitigate or remit any penalty incurred under an Act relating to Inland Revenue.

Company Law Amendment.

THE eighth day of the sittings of the Cohen Committee on Company Law Amendment was occupied with the examination of witnesses representing two rather different interests. Mr. HAROLD GEORGE BROWN, Mr. JOHN IVAN SPENS and Mr. ARNOLD SIMON, all represented the Association of Investment Trusts, a body formed in 1932, the membership of which now numbers 245 investment trust companies with total issued share and loan capitals amounting to over £386,000,000. The capital has been provided and owned by a large number of small investors, the average holding being about £300. The other interest, on behalf of which evidence was given by Mr. GRANVILLE TYSER, was the Accepting Houses Committee, constituted by fourteen accepting houses and twelve banks and other companies and firms, the primary business of most of whom is that of granting acceptance credits against the export and import of goods, and also in many cases of acting as issuing houses in connection with domestic and foreign issues of securities, placing and dealing in securities for their own account, and advising private customers on investments. The Association of Investment Trusts hold that where a public company carries on part of its business as a private company it would be unfortunate if this were rendered difficult owing to the necessity of disclosing to shareholders and, incidentally, to all competitors, details of the business which would not be required if that part of the business were conducted as a branch. They suggest an amendment of the law (ss. 310 and 311) to enable shareholders and creditors to receive full and properly audited accounts from receivers and managers. The Committee agrees with this view. In the case of public companies the Association considers that twenty-one days' notice should be necessary for any general meeting, even the annual general meeting. The Association has few recommendations to make for major amendments of the law, and considers that, generally speaking, the Companies Act, 1929, has worked satisfactorily. The Accepting Houses Committee sees no necessity for any special provisions on the formation and issue of share and loan capital and disclosure of accounts of private companies. The public, the Committee holds, is not concerned with the details of private companies, and there is no method by which dishonesty can be defeated if intending creditors are unwilling to make their inquiries before it is too late. Both the Association and the Committee consider that the holding of shares and debentures by nominees has proved "of immense convenience to the business community and the investing public without any harm to the investing public." The Committee is not in favour of any elaborate new legislation on the form and contents of the balance sheet and profit and loss account, and even considers that separate information as to subsidiary companies need not be enforced if a consolidated balance sheet is published. The reason given is that an operating company is not compelled to disclose the separate results of each department of its business, and a subsidiary company is, in effect, a department of most holding companies. The evidence in both cases seems to diverge considerably from the views frequently expressed on behalf of bodies of accountants and auditors.

Land Registration: Restrictive Covenants and Easements

THE results of a discussion between the Council of The Law Society and the Chief Land Registrar are reported in the February issue of *The Law Society's Gazette*. The matter related to restrictive covenants and easements affecting land, the title to which is registered, and the Council pointed out that in some cases the register includes a verbatim extract from the relevant documents, while in others the register merely contains references to the dates of the documents and the names of the parties to them. The Council held that verbatim extracts should always be included, in order to prevent additional labour and expense to the parties and their solicitors. The Act and Rules merely authorise the entering of the restrictive covenants by reference to the instrument (Land Registration Act, 1925, s. 50, and r. 212 of the Land Registration Rules, 1925). The Chief Land Registrar agrees with the Council's view, but shortage of staff since the war has compelled the abandonment of the practice of a verbatim inclusion which was begun before the war. The registry will, however, supply on application office copies (made by photography) of deeds referred to in the register, the minimum charge being 3s. for an office copy of a deed, and 2s. for an office copy of a plan. There has been no recent change in the practice with regard to appurtenant easements. This is that simple easements, such as rights of way over roads or passages, have been entered shortly and not by quoting verbatim. More complicated easements are set out verbatim, unless, as occasionally happens, they are so complicated that this is impracticable, when they are entered by reference.

The Manchester and Salford Poor Man's Lawyer Association.

IN their report for the year ending 31st March, 1943, the Manchester and Salford Poor Man's Lawyer Association gives some interesting figures relating to their work during that year. The total number of cases which came before them in 1941–2 was 2,879. In 1942–3 this figure increased to 3,097, and of these matrimonial and family cases were 34·8 per cent.; landlord and tenant, 9·8 per cent.; damage and accident, 8·8 per cent.; workmen's compensation, 8·7 per cent.; wills and intestacies, 4·6 per cent.; pensions and insurance, 4·5 per cent.; libel and slander, 3·9 per cent.; hire-purchase, 3·9 per cent.; master and servant, 3·7 per cent.; debts and moneylenders, 2·9 per cent.; war damage, 2·5 per cent.; and miscellaneous, 11·9 per cent. The following points are stressed: (*a*) Advice and assistance are only given to people who cannot reasonably afford to go to a solicitor. The Association are not bound by the scales laid down in the Poor Persons Rules, and therefore can take all relevant circumstances into account, e.g., the size of an applicant's family, rent, etc.; (*b*) co-operation with other organisations; (*c*) the advantage of the Central Office with a whole-time assistant secretary in facilitating the obtaining of information, completion of forms, etc.; (*d*) the usefulness of the Association's fund for payment of court fees, etc. The most important development in the Association's work during the past year had been in connection with the free legal aid scheme for soldiers and airmen up to the rank of sergeant, who had not sufficient private resources to employ their own legal advisers, which was announced in the House of Lords in July, 1942. The assistance which the Association were now giving to the free legal aid scheme was in addition to the advice given to individual members of H.M. Forces who came to the branches in the ordinary way. The committee also reported that the sum of £20 had been received from the Social Welfare Committee of the Manchester City Council, in pursuance of a provision in s. 67 (*e*) of the Poor Law Act, 1930, which enabled a public assistance authority to make an annual subscription to any institution which was calculated to render useful aid in the administration of the relief of the poor. As required by the Act, the payment had been sanctioned by the Minister of Health, and so far as the committee were aware, Manchester was the first public assistance authority in the country to make a grant to a Poor Man's Lawyer Association. It is to be hoped that this useful precedent will be followed by other local authorities. The number of advisers at branches during the year was fourteen, and as four branches were open every week, the fifth being open twice a month, the majority of the advisers had been attending a branch every fortnight, in addition to other forms of national service. As a result of an appeal during the year, eleven firms were added to the rota of conducting solicitors, which now numbered fifty-five. As 510 cases were referred to conducting solicitors, the average for each firm over the year was ten, which was nearly one a month.

Solicitors and Changes of Name.

THE duty of a solicitor on being asked to witness the signature to a notice requesting the insertion in the *London Gazette* of an advertisement of change of name is the subject of a short note in the February issue of *The Law Society's Gazette*. The opinion of the Council of The Law Society is that a solicitor is under no obligation to witness such a signature. If he does so, he must satisfy himself as to the identity of the signatory, particularly if the signature is that of a person unknown to him. At present this can suitably be done by examination of the signatory's identity card and comparison both as to name and signature, with the corresponding particulars in the notice. The maximum charge for the solicitor's services in this respect should be 10s. 6d. in the normal case. The Council understands that His Majesty's Stationery Office are in general agreement with the view that a solicitor is not under any obligation to witness the signature to such a notice.

Recent Decisions.

In *Lace* v. *Chantler*, on 11th February (*Estates Gazette*, 19th February), the Court of Appeal (THE MASTER OF THE ROLLS and MACKINNON and LUXMOORE, L.JJ.) held that where a rent book contained the words "furnished, for duration" those words, which must mean "for the duration of the war," were not sufficiently specific to create any ascertained term, nor could they take effect as an agreement to grant a licence, as the intention was to create a tenancy and nothing else. In the result the Court held that a weekly tenancy had been created, which had been properly terminated by notice to quit.

In *Walder* v. *Hammersmith Metropolitan Borough Council*, on 23rd February (*The Times*, 24th February), HUMPHREYS, J., held that a boy of eleven years of age who was killed while trying to cut an electric wire in an air-raid shelter was a trespasser, and that on the facts the defendants had not been in the least degree negligent on the steps which they had taken to prevent children from trespassing in the shelter, which, although the gate had been left open following two air raids, was clearly private and enclosed property.

Criminal Law and Practice.

Silence as Evidence of Guilt.

IT is not uncommon, as advocates in police courts well know, for police officers who have some ground for believing A to have been involved with B in the commission of a crime, to say, quite truthfully, to B: "A says that you were with him at X on the 15th. What do you say about that?" Whether or not an answer agreeing with what A said is tantamount to an admission of guilt, B realising that he is talking to a police officer, from motives other than that of concealing his guilt, may make no reply. Afterwards, if B is charged, the prosecution not infrequently seeks to use his silence as an admission of guilt. This practice, it was said in one case, ought not to be followed, and such evidence should, in the judge's discretion, be excluded, but strictly it is admissible (*R.* v. *Hancox*, 60 SOL. J. 76; *R.* v. *Bromhead*, 71 J.P. 103).

Where the person has been charged it is in fact a breach of r. 8 of the Judges' Rules of 1912 to read to him a statement made by the other person charged and invite a reply.

Some laymen and all lawyers know that when one is talking to a police officer on a subject on which there is a risk of being personally involved as a defendant, it is wisest to say least. This is not so because there is any danger that the officer will wilfully distort a conversation in making his notes, but because of the manifold possibilities of misunderstanding even if the policeman's notes are verbatim, which is not always the case.

The English law has always taken the view that silence may in certain circumstances amount to an admission, by conduct, of the guilt of the person silent. *Qui tacet consentire videtur.* Where a wife, for example, made a remark to her husband on a subject which afterwards became matter on which he was charged with crime, his failure to give a proper reply was held to be rightly the subject of comment by counsel for the Crown (*R.* v. *Smithies* (1832), 5 C. & P. 332). The only comment that is allowed, however, is on the conduct or demeanour of the accused person on hearing the allegation that is made, and it is in no way permitted as an allegation that the statement made in the hearing of the accused is evidence of the matter it contains (*R.* v. *Norton* [1910] 2 K.B. 496).

The weight to be attached to the fact of silence will vary according to the circumstances. Where an inducement was held out to a party to make a statement, the mere fact that a person implicated by the statement was present and silent was held to have very little weight, because, it was said, the prisoner would not know whether it was better for him to be silent or not (*R.* v. *Jankowski* (1886), 10 Cox C.C. 365).

The rule that the silence of an accused person on being cautioned and charged should not be the subject of comment by the trial judge was heavily emphasised in the case of *R.* v. *Leckey* (87 SOL. J. 447), which came before the Court of Criminal Appeal on 1st November, 1943. The charge was murder. After being charged and cautioned, the appellant said: "Well, I have nothing to say until I have seen someone, a solicitor." On being cautioned on another occasion and asked to account for his movements, he said: "I was with the girl. I want to be fair to you and to myself, and before I make a statement I should like to get advice." In summing up, the learned trial judge commented on the fact that the accused was apparently always cool and collected, and asked whether, when a man was charged with murder and had not committed murder or anything like it, they would expect him to deny it. "Of course," said the judge, "he is not bound to say anything, but what would you expect." Later he said that it was not a little difficult to see why, when he was asked to account for his movements and told that inquiries were being made, he should not say: "I did not murder the girl; when I left her she was all right," if that were the fact. The learned judge repeated this at the end of his summing up.

After a review of the authorities, the court allowed the appeal, although, to quote Viscount Caldecote's judgment, "evidence which would have justified a verdict of guilty on a proper direction is to be found in plenty," because the court was unable to say that a jury would inevitably have come to the same conclusion (Criminal Appeal Act, 1907, s. 4, and *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462).

The authorities cited were *R.* v. *Whitehead* [1929] 1 K.B. 99, and *R.* v. *Charavanmuttu* (1930), 22 Cr. App. Rep. 1; similar cases where evidence of silence after a charge had been wrongly treated as corroboration; *R.* v. *Naylor* [1933] 1 K.B. 685, where after the caution the appellant said: "I do not wish to say anything except that I am innocent," and the Recorder, in summing up, strongly but wrongly commented on the fact that he offered no further explanation; Lord Hewart, L.C.J., said that the words of the caution did not mean that a prisoner remained silent at his peril; and *R.* v. *Littleboy* [1934] 2 K.B. 408.

The last case deserves careful examination, because it was not the simple case of mere silence after a caution. The appellant, who had been charged with a sexual offence, had at the trial set up an alibi, supported by his own evidence, that of his wife, and two other witnesses. After he was cautioned he said: "Is this a summons for maintenance?" When formally charged before the magistrates he said: "I am not guilty; I reserve my defence." The learned judge, Avory, J., told the jury that it was unfortunate that the accused had not told the magistrates of his alibi, as by reserving his defence he deprived the prosecution of the opportunity of testing it. The Court of Criminal Appeal held this to be a proper direction, as it was one thing to comment that a defence had not been set up at an earlier date so as to give it a chance of being tested, and another to use that non-disclosure as evidence against the accused, or as corroborating an accomplice's evidence. Lord Hewart held that it was not a misdirection to say that failure to disclose an alibi in time was "something to be borne in mind with reference to the value of the defence"—in other words, whether the defence was to be believed. Nevertheless, believing the defence would mean disbelieving the prosecution's case, and disbelieving the defence would therefore add weight to the case for the prosecution. What the court seems to have held is that in some circumstances, though not necessarily in all, this addition of weight to the prosecution's case by a reference to the silence of the accused about his defence, not necessarily merely that of alibi, would not be a misdirection. The court made it clear that it was not seeking to lay down, nor would it be useful to lay down, any general proposition with regard to the defence of alibi or with regard to the disclosure of defences. It is, however, advisable for an advocate to assume that some comment will be made on his late disclosure of a defence which could have been tested at an earlier date; but in no case, it seems, will he be able certainly to predict whether the Court of Criminal Appeal will hold such comment to be a misdirection.

One thing more remains to be said, and that is on the question of the propriety of referring in summing up to silence in answer to specific information concerning statements made implicating the person silent, information which is given before any charge is preferred. *R.* v. *Feigenbaum* [1919] 1 K.B. 431, is authority that such comment may properly be made; but the question still remains whether such silence has any weight as evidence for the prosecution in the subsequent trial of the person implicated. In many cases, it is submitted, it can have but little weight, for, as we have pointed out, if the accused realises that he is talking to a police officer or other person in authority, there are many reasons other than his guilt why he should remain silent. If, on the other hand, he does not realise that he is talking to an official, the casualness of the conversation or a natural reserve may furnish satisfactory explanations of his failure to unburthen his soul to a mere chance acquaintance. His silence will in such a case be evidence, but not evidence of any serious import.

A Conveyancer's Diary.

Trustees and Bonus Shares.

TRUSTEES are placed in a position of some difficulty when companies make distributions out of the ordinary course. The regular dividends on shares comprised in the trust are, of course, income. But what if a company splits its annual distributions, as many do, into dividend and "bonus"? It has never been clear to me why this practice is adopted. Of course, if there is anything abnormal about the extra payment, in that it is made out of reserves or out of a profit on the realisation of an asset, it is obviously desirable to separate it from the regular dividend paid out of current revenue. But many companies seem to make a habit of paying a "bonus" every year out of their current profits. Such payments clearly go to the tenant for life, just as if they were called "dividends." But distributions of an abnormal kind call for further inquiry.

The first leading case in modern times was *Bouch* v. *Sproule* (1887), 12 App. Cas. 385. The settled shares in that case were in a company which had accumulated out of its profits a large reserve for meeting contingencies, equalising dividends and maintaining the company's property. After the testator's death the company propounded an arrangement, the purpose of which obviously was to make these reserves available as part of the general body of the company's capital. The directors, however, resorted to the device of distributing a "bonus dividend" totalling the amount to be capitalised and offering each shareholder the option of using his share of the bonus dividend to purchase new shares on favourable terms. I need not go further into details, but it is important that the noble and learned lords expressed the opinion that the company's arrangements were not meant to put cash into the hands of the shareholders, but were intended to increase the company's general capital. Moreover, the figures were such that it was most unlikely that any shareholder would accept cash and refuse the option to take shares. In these circumstances it was held, reversing the judgment of the Court of Appeal and restoring that of Kay, J., that the new shares were an accretion to the corpus of the fund. The House of Lords discussed the earlier case of *Brander* v. *Brander*, 4 Ves. 800 (and a similar Scottish case of *Irving* v. *Houstoun*, 4 Paton, Sc. App., 521), where the Bank of England, having paid out of their funds for the public service £1,000,000, received £1,125,000 3 per cent. Annuities, which they proceeded to distribute to the proprietors

of bank stock. The distributed stock was held to be capital, but these cases were unusual, by present standards, in that they concerned statutory corporations with no power to increase their capital. Where there is power to increase capital, the effect of *Bouch* v. *Sproule* is that one must inquire whether the company has done so, looking at the substance of the transaction and not to form. If the company's capital has been increased, the bonus shares (or call them what one will) belong to the remaindermen; otherwise they belong to the tenant for life. There is no short cut; the court must inquire into the transaction as a whole.

In *Re Bates* [1928] Ch. 682, the settled shares were in a company owning and operating steam trawlers. Some of these vessels were sold for amounts substantially above the values at which they had stood in the company's balance sheet. The company then distributed what it called a "cash bonus" on four occasions. On one occasion the amount of this "bonus" was 10 per cent. on the face value of the shares, on two occasions it was 100 per cent., and on the third it was 200 per cent. The company sent round notices saying that these payments were capital payments not liable to income tax or super tax, a statement which in the judgment of Eve, J., could not determine their true character. He said that the suspense account into which the profits on sales had gone before distribution represented "the total appreciation of the capital assets" of the company, a fund which the company could either treat as available for dividend or, having regard to its power to increase its capital, could "apply to that purpose by, for example, increasing the capital, declaring a bonus and at the same time allotting to each shareholder shares in the capital of the company paid up to an amount equivalent to his proportion of the bonus so declared." But unless and until capitalised, which, in the case of a company with power to increase its capital involves the exercise of that power, the fund continues to be accumulated profit, as it was in its inception. That position is the same whether the profit arose from realisation of capital assets or from current trading. The payments in question therefore belonged to the tenant for life, not having been capitalised.

A somewhat similar point arose in the Privy Council in *Hill* v. *Permanent Trustee Company of New South Wales, Ltd.* [1930] A.C. 720. A pastoral company disposed of all its land, stock and other assets, but did not go at once into liquidation. It then declared a dividend of 45 per cent., sending with the cheques a statement that "the dividend is being paid out of the profits arising from the sale of breeding stock, being assets of the company not required for purposes of resale at a profit." The question was, of course, whether the payment accrued to corpus or passed under the gift of "the net income or profits to be derived from" the estate. The judgment of the Board (Lord Blanesburgh, Lord Tomlin and Lord Russell of Killowen) was delivered by Lord Russell. He observed that a company can distribute as dividends to its shareholders "the excess of its revenue receipts over expenses properly chargeable to revenue account": such moneys would *prima facie* belong to the tenant for life. But the company is not obliged to distribute; and where the company goes into liquidation the fact that the moneys received by the shareholders in the liquidation may be swollen by including undivided profits, does not divert any part of such moneys from the remainderman. It followed that "moneys paid in respect of shares in a limited company may be income or corpus according to the procedure adopted." On the other hand, a company in parting with moneys available for distribution among its shareholders "does not know and does not care whether a shareholder is a trustee of his shares or not." A limited company, not in liquidation, "can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital." Any other sort of distribution is a division of profits, whatever it is called, and moneys so paid are *prima facie* income. But different considerations apply where a company with power to increase its capital and possessing a fund of undivided profits "so deals with it that no part of it leaves the possession of the company but the whole is applied in paying up new shares which are issued and allotted proportionately to the shareholders." The result is quite different from paying away profits to shareholders. Profits paid away disappear from both sides of the balance sheet. After an issue of bonus shares "the assets of the company remain undiminished, but on the liabilities side the item of undivided profits disappears and its place is taken by a corresponding increase of liability in respect of share capital." Consequently, "moneys which had been capable of division by the company as profits among its shareholders have ceased for all time to be so divisible and can never be paid to the shareholders except upon a reduction of capital or in a winding up." The newly issued shares are thus capital. The Board then referred to *Bouch* v. *Sproule*, which, unlike the present, was a case where the company did not pay out any moneys, and to *Re Bates*, the language of which they cited with approval. Disapproving two Australian cases, they held that as no step had been taken to capitalise the payments before them, the moneys went to the tenant for life.

Finally, there is *Re Ward* [1936] Ch. 704, a decision of Clauson, J. One peculiarity of this case lay in the fact that the steamship company concerned had an unusual article (67A), adopted in the testator's lifetime, which provided that the company in general meeting might distribute the proceeds of sale of capital assets among the shareholders "on the footing that they receive the same as capital." (Of course, an article of this kind would not be workable in every sort of business.) This power was exercised after the testator's death. An attempt was made to argue that *Hill* v. *Permanent Trustee Company* laid down some principle which would prevent the sums so received from being capital in the hands of the trustees. But, as Clauson, J., pointed out, the peculiar provision of art. 67A had no parallel in the other case. He held, therefore, that the sums received were capital. Earlier in his judgment he mentioned that the gift to the life tenant was of "dividends interest and annual income to arise" from the trust estate. The payment was "not a dividend in the ordinary sense, it certainly does not come within the term 'interest,' and it does not seem aptly described as annual income." It is not clear what would have been the position, so far as this part of the judgment is concerned, if the gift of the life interest had been couched in a wider phrase, such as "income," or "profits and income." But the case would probably have been decided the same way in view of art. 67A. In the earlier cases nothing was made of the wording of the gift of the life interest, but it seems necessary to look at this point in all cases. Mostly, there will be nothing in the gift to alter the position set out in *Hill* v. *Permanent Trustee Company*; and *Re Ward* is of interest as showing an exception rather than a rule.

In conclusion, it should perhaps be mentioned that where any "conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company," they are empowered by Trustee Act, s. 10 (4), to sell such right, and in such case the purchase-money becomes capital money of the trust. This enactment appears to conform with principle, since the company's decision to issue such securities will involve the capitalisation of the underlying assets.

Landlord and Tenant Notebook.

Place of Payment of Rent.

A QUESTION dealt with in the course of a recent "Can I help you?" broadcast was the question whether a tenant is obliged to pay his rent elsewhere than on the demised premises. The point is not one which has often cropped up, but it is of more than mere academic interest at the present time. For landlords of weekly properties, who in the past employed collectors as a matter of course, are finding it difficult to replace those called up or directed to other employment; and coupled with practical difficulties is the deterrent expressed in s. 2 (2) of the Increase of Rent, etc., Act, 1920: "Any transfer to a tenant of a burden or liability previously borne by the landlord shall . . . be treated as an alteration of rent, and where, as a result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased . . ."

The broadcaster handled the subject with commendable caution, and if he, in the couple of minutes at his disposal, offered no clear-cut answer to the question, this can certainly be ascribed to the obscure state of the authorities rather than to any inability to express himself tersely.

Any practitioner who turns to a text-book for advice is likely to find himself puzzled by a conflict between statements usually made in different parts of the work. In that part which deals with rent, he may be told that rent is to be paid on the land, the land being the debtor, but that this does not apply if the tenant has covenanted to pay it; the covenant, as opposed to a mere reddendum, places the tenant in the position of any ordinary debtor, who must seek out his creditor and pay him. But in another chapter he may find it stated that where there is no such express covenant, the law will imply one.

Before examining decisions, I think it would be as well to refer to Coke-upon-Littleton, for I believe that certain passages in the Commentarie, to be found on pp. 201b and 202a, account for some of the misunderstanding that has arisen. "By this section," says the learned commentator, referring to s. 325, ". . . sixe things are to be understood: First . . . that though the rent be behind and not paid, yet if the feoffor doth not demand the same, etc., he shall never re-enter because the land is the principal debtor, for the rent issueth out of the land . . . Secondly, the demand must be made upon the land, because the land is the debtor, and that is the place of demand appointed by law." The third rule avoids demands not made at the most notorious place on the ground, the fourth deals with express provision (in the reddendum) for payment elsewhere, the fifth permits *sub modo* of payment on less notorious parts of the ground; then "Sixthly . . . it is further to be known what time the law hath appointed for the same," and "the last time of demand of the rent is such a convenient time before the sunne setting of the last day of payment as the money may be numbered and received . . ."

Thus the commentary—and though the wording of the first rule suggests that what is being discussed is forfeiture and nothing else, this seems to have escaped notice on occasions, as does the

fact that the section itself is the first of a chapter headed " Of Estates upon Condition." Indeed, it was the inconvenience occasioned by these rules which led to the passing of the Landlord and Tenant Act, 1731, s. 2, later replaced by the Common Law Procedure Act, 1852, s. 210, dispensing with the necessity for formal demands when a half-year's rent is in arrear and there is insufficient distress to countervail the arrears; though apart from that enactment the difficulty was and is usually met by inserting " (whether formally demanded or not) " or some such words in the proviso for re-entry.

Coke, then, is of no assistance when we have to consider whether the tenant of some " weekly property " can safely plead that no one came to collect his rent. And the trouble is that statements found in two other ancient writings are difficult to reconcile.

According to " Comyns' Digest " (p. 402), it is no defence in an action for debt to plead that no demand was made; and a passage in Sheppard's " Touchstone " (p. 378) lays down that if the condition of an obligation be to pay money but no place is set down where it shall be done it must be done to the person of the obligee wherever he may be, and for this purpose the obligor must at his peril seek out the obligee.

These authorities were cited by Martin, B., in *Haldane* v. *Johnston* (1853), 8 Exch. 689, as were the decisions in *Crouch* v. *Fastolfe* (1680), T. Raym. 418, and *Rowe* v. *Young* (1820), 2 B. & B. 165. *Haldane* v. *Johnson* itself shows that where there is an express covenant to pay rent, the plea that no one came to collect it will not avail the tenant. This does not exactly imply that the plea would be valid if there were no express covenant. But *Crouch* v. *Fastolfe* merely decided that a plea in an action for rent that the defendant was ready on the land, etc., was good, without specifying an actual tender; *Rowe* v. *Young* was concerned with the question (one on which the Courts of King's Bench and Common Pleas had long differed) whether a bill of exchange accepted payable at a particular place was or was not accepted " generally," and its value for present purposes is due to the fact that some of the twelve judges illustrated their reasoning by referring to the question of place of payment of rent. " Rent is reserved in some cases generally," said Bayley, J., " and then the proper place for the payment, the place appointed for law, is the land out of which it issues." Richardson, J., also seems to have taken the view that readiness, etc., " according to the contract " would be a valid defence to a claim for rent. And this accords with a passage in Sheppard's " Touchstone " which follows, at a little distance, that cited by Martin, B., in *Haldane* v. *Johnson*, and referred to above: Sheppard completes the story with " and if a man make a lease for life or years of land, rendering rent generally, and gives an obligation with condition for the payment of the rent, the lessee is not bound from any place in the land to seek the lessor to pay him his rent."

As against this, it can be shown that the reddendum has on several occasions been referred to, it may be *obiter*, as implying a covenant to pay rent; and there is nothing to show that such covenant differed, as regards obliging the covenantor to seek out his creditor, from the express covenant. Passages in judgments delivered by two eminent chief justices and one eminent Lord Chancellor can be cited. In *Giles* v. *Hooper* (1690), Carth. 135, Holt, C.J., dealing with a question whether under a particular lease " *rendering* £80 p.a. free and clear from all maner of teaxes etc." the tenant was entitled to deduct the recently-imposed land tax, said " rendering makes a covenant ", and held accordingly that the lessee must pay the whole rent. In the course of his judgment in *Webb* v. *Russell* (1789), 3 T.R. 393 (which decided that covenants entered into with a mortgagor-lessor could not, as the law then stood, run with the land), Kenyon, L.J., observed, " yet both the implied covenant, arising from the ' yielding and paying ' and also the express covenant are entered into with S." In *Iggulden* v. *May* (1804), 9 Ves. 325, dealing with the question of the terms of a lease demanded by virtue of a covenant to renew, Lord Eldon said: " there is a covenant for quiet enjoyment under the words ' granted and demised ' ", and the decision has been much cited on this point —but what is of present interest that the passage continued " . . . a covenant for payment of rent under the words ' yielding and paying ' ".

I do not suggest that it would be perfectly safe for the landlord of weekly property to rely on these *dicta*; it might well be argued that a written reddendum is essential, and that there is some magic about " yielding and paying " or " rendering " as there was thought to be about the use of the word " demise " (see *Baynes & Co.* v. *Lloyd & Sons* [1895] 2 Q.B. 610; not followed in *Budd-Scott* v. *Daniell* [1902] 2 K.B. 351, or *Markham* v. *Paget* [1908] 1 Ch. 697). Further—when dealing with tenancies of this kind it is important to consider the possibility of custom affecting the terms of weekly tenancies, and I would recommend those concerned to study the *obiter dicta* of Lord Russell, L.C.J., in *Broggi* v. *Robins* (1899), 15 T.L.R. 224 (C.A.). The authority is but one of many showing that a covenantee under a repairing covenant is not liable without notice of the defect; but what is in point is that the learned lord chief justice treated evidence by the defendants that " though they never actually agreed to keep premises in repair, yet in fact they always did whatever repairs were necessary " as supporting an " *implied agreement* to repair." It was, his lordship said, the usual course " in tenancies of this kind."

To-day and Yesterday.

LEGAL CALENDAR.

February 28.—Usher Gahagan and Terence Connor, hanged on the 28th February, 1749, for diminishing the current coin of the realm by filing it, were both Irish and both scholarly and even learned men. The former was educated at Trinity College, Dublin, came to London and made contact with the booksellers there, undertaking to make a Latin translation of the " Essay on Man," but fell into dissipation through bad female company and lost his prospects. Connor, who had a remarkable knowledge of Roman history, was heir to a considerable property but was ruined by lawsuits over his father's affairs. In their scheme of tampering with the coinage they worked with Hugh Coffey, another Irishman. The suspicions of a bank employee having been aroused by their proceedings, he invited them to drink a glass of wine with him at the Crown Tavern near Cripplegate. They betrayed themselves by incautiously suggesting that he should collaborate with them. Coffey, who was arrested first, turned King's evidence, and the other two were soon afterwards tracked to the public house called Chalk Farm, on the road to Hampstead, and brought to Newgate.

February 29.—On the 29th February, 1671, Charles II, the Duke of York and Prince Rupert, attended by several Lords, including the Duke of Monmouth, dined at Lincoln's Inn. Trumpets and kettledrums sounded as they proceeded through the garden, the barristers and students standing in ranks in their gowns. In the Hall the King sat under a canopy of State, and the Lords took their places at tables prepared for them on either side of the chamber. Sir Francis Gooderich, the Reader, and the benchers stood in attendance near his chair, and acted as controllers to keep good order, while the barristers and students acted as waiters. His Majesty's violins played in the gallery, and towards the end of dinner " to do transcendant honour and grace to the Society," he sent for the Book of Admittances and entered his name therein. All the members manifested their joy " it being an example not precedented by any former King of this realm." The Duke of York, Prince Rupert and the other Lords followed this example, borrowing students' gowns " with which His Majesty was much delighted." After rising from table, the King proceeded to the Council Chamber, where he knighted two Benchers, a barrister and a student. On his departure he " made large expressions of his most gracious acceptance of the entertainment " and signified " the great respect and esteem he should ever have for the Society."

March 1.—In April, 1849, Lord Chief Justice Denman had a paralytic stroke, but with failing strength he still insisted on continuing to work. His reluctance to vacate his office was fortified by the fear that Lord Campbell, then Chancellor of the Duchy of Lancaster, would succeed him. His friends were desperately afraid that if he delayed too long, another stroke might actually incapacitate him from performing the formalities of retirement, in which case an Act of Parliament would have been the only resort. At last, however, he signed his resignation, which was accepted on the 1st March, 1850. On that day the Attorney-General, Sir John Jervis, wrote to him expressing his regret that illness had compelled him to retire from the office he had filled with distinguished honour to himself and eminent advantage to his country, and thanking him for the kindness and courtesy which had endeared him to the Bar. Replying on the same day, Denman declared he had not failed in his anxious wish to sustain and even elevate the character of the English Bar.

March 2.—In his diary Campbell noted: " A Cabinet was summoned for half past two on Saturday March the 2nd. Entering the room of our meeting at the Foreign Office, I found Lord John Russell there. He informed me that he had just left the Queen, that he had taken her pleasure, and that all was quite right. He then said to the members of the Cabinet who were assembled: ' My lords, and gentlemen, let me present you to the Chief Justice of England.' I shook hands with them all, thanked them for their kindness while I had been their colleague, wished them all manner of prosperity and immediately withdrew. We had a very merry evening at home and forgot all our anxiety."

March 3.—Next day, the 3rd March, was a Sunday and Campbell noted: " We all went to church together and took the Holy Communion, praying that I might be enabled to perform the new duties to devolve upon me."

March 4.—On the 4th March Campbell was in the House of Lords and noted: " I did not make any formal announcement of having left the Cabinet, but I published my promotion by eschewing the ministerial bench and showing in various ways that I was no longer a member of the Government. I received the warmest congratulations from the peers on all sides . . . Lord Ellenborough, shaking hands with me, said that he felt particular satisfaction, from the interest which he took in the office of Chief Justice, and he made me an offer, which I gladly accepted, of the use of the collar of SS which had been worn by Lord Mansfield, and through Lord Kenyon had come down to his father. This I was to have copied and to wear till my own was ready."

March 5.—On the 5th March Campbell wrote to his brother: "This morning began with 'ringing me out' at Lincoln's Inn. The prospect of the ceremony made me rather uncomfortable from the time when I knew that Brougham was to preside at it, for there was no saying what line he would take . . . In the event he confined himself to an eulogium upon Lord Denman . . . Brougham tried to play me a dog's trick by running away with my fee of ten guineas as a retainer to plead, when become a serjeant, for the Society of Lincoln's Inn. I made him disgorge the money at the House of Lords by threatening to sentence him to the gallows as a thief . . . I was sworn before the Chancellor at four o'clock . . . First I was made a serjeant and then my patent as Chief Justice was handed to me."

THE DESCENT OF ROBES.

It seems that the late Mr. Justice Bennett has left his judicial ermine to his daughter Jean. Quite an interesting book might be written on the ultimate destiny of the robes of the judges, their wigs and other adornments. Sir George Bonner has already published some notes on the descent of the various gold collars of SS worn by the Chief Justices. In his many-sided book on the circuits Lord Justice MacKinnon tells how Lord Mersey on his appointment as President of the Probate, Divorce and Admiralty Division purchased for £50 the black and gold gown of his predecessor Lord Gorell. When he in turn resigned he gave it as a present to his successor Sir Samuel Evans. But subsequently meeting Gorell he told him as a joke: "I have done a stroke of business. You remember you sold me that gown for £50. Well, I have got £100 for it from Evans." "Really," said Gorell with grave solemnity, "that's very interesting. You see, Jeune gave it to me." In Ireland when Mr. Justice O'Brien succeeded Mr. Justice Fitzgerald it was noticed that he appeared in well-worn robes and the Bar was much amused at his having bought them second-hand. It was only long afterwards that it came out that he had deliberately paid his predecessor's crier the full price of the most expensive set of robes. Incidentally, it is reassuring to know that the judicial ermine is ermine indeed and not, as Carlyn sarcastically suggested in one of his passages of rhetorical denunciation, squirrel skin.

Review.

An Introduction to the Principles of Land Law. By A. D. HARGREAVES, M.A., LL.B., Solicitor. 1944. Demy 8vo. pp. xii and (with Index) 204. London: Sweet & Maxwell, Ltd. 16s. 6d. net.

The Conveyancer writes: I have read Mr. Hargreave's "Introduction to Land Law" with real interest. He modestly describes it as an introduction to the standard students' text-books, and it is mainly for the beginner. But it seems to me to fill a need. Since 1926 we have had a system of real property law of which a fairly intelligible account can be given, if, but only if, one has a clear idea of its mediæval basis. Moreover, there is such a quantity of detail that the student finds difficulty in seeing the system as a whole. This book tells the beginner shortly, but in an accurate and always readable way, how real property law grew into what it now is, leaving him to seek the detail elsewhere. With this clue he is less in danger of being lost later than we used to be. In short, this seems to be an excellent little book, and deserves much success.

Obituary.

DR. W. R. BISSCHOP.

Dr. Willem Roosegaarde Bisschop, the eminent jurist and authority on international law, died on Tuesday, 22nd February, aged seventy-seven. He was called by Lincoln's Inn in 1901, and by the Middle Temple in 1913. From 1897 to 1941 he was standing counsel to the Dutch Legation. From 1907 to 1910 he was lecturer in Roman Dutch Law to the Inns of Court.

MR. T. H. GRANGER.

Mr. Thomas Henry Granger, solicitor, of Huddersfield, died on Thursday, 17th February, aged seventy-three. He was admitted in 1895.

MR. W. MOLINEUX.

Mr. Walter Molineux, solicitor, senior partner of Messrs. Molineux, McKeag & Cooper, solicitors, of Newcastle-on-Tyne, died on Wednesday, 23rd February, aged sixty-nine. He was admitted in 1904.

MR. R. W. SHERWIN.

Mr. Robert Walter Sherwin, solicitor, senior partner of Messrs. R. W. Sherwin & Son, solicitors, of Portsmouth, died recently, aged eighty-four. He was admitted in 1894.

ADVERTISEMENTS FOR CREDITORS IN THE "LONDON GAZETTE."

Solicitors are reminded that the schedular form of advertisement for creditors by personal representatives, which was introduced in May, 1943, is not applicable to advertisements by trustees, which must still be inserted in full in the old form.

Our County Court Letter.

Decisions under the Workmen's Compensation Acts.

Sprained Back.

IN *Cranfield* v. *Sheepbridge Stokes Centrifugal Castings, Ltd.*, at Chesterfield County Court, the applicant's case was that he had sprained his back muscles while pushing a wheelbarrow containing three to four hundredweight of metal. After an absence from work (for a period in respect of which he received compensation) the applicant resumed work on the 25th June, 1943. On the 17th July there was a recurrence of the sprain and the applicant was having hospital treatment, involving further absence from work, for seven weeks, viz., until the 24th September. He resumed work, but on light work, on the 25th September. His claim was for compensation, at 35s. a week, for the seven weeks in question and for a declaration of liability. His medical evidence was that on the 8th October he was not malingering. The case for the respondents was that on the 19th July a deputation of three workmen complained to the management that the applicant was lazy, wasted time talking in the canteen, and did not do his share in a two-man job. On the 12th August the medical evidence was that he was malingering. His Honour Judge Willes was not satisfied that the second period of absence was due to a recurrence of the sprain. No award was made for that period. As there was no evidence that the sprain might recur, no declaration of liability was made.

Fractured Leg.

IN *King* v. *Sutton & Co., Ltd.*, at Leicester County Court, the claim was for a declaration of liability. The applicant, while employed as a vanman, had had a fall resulting in a fractured leg. He was consequently unable to stand or walk for any length of time. The Employment Exchange had nevertheless placed him in a situation in which he was earning £4 a week. This was more than his pre-accident wages, but the situation was only temporary in the sense that it depended upon a continuation of the present abnormal conditions in industry. The respondents agreed to a declaration of liability. His Honour Judge Galbraith, K.C., made an order as asked.

Arthritis not an Accident.

IN *Hart* v. *Morris & Co. (Kidderminster), Ltd.*, at Kidderminster County Court, the applicant had had a fall in January, 1942, and had injured his shoulder. He resumed work three weeks later, but in March, 1943, he became incapacitated. The medical evidence was that the incapacity was due to traumatic arthritis, caused by the accident. The respondents' case was that there was no connection between the fall and the arthritis. His Honour Judge Roope Reeve, K.C., was not satisfied that in March, 1943, there was any trauma remaining from the accident in January, 1942. The description of the arthritis as "traumatic" appeared to be based on assumption. No award was made.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Multiple Leases and War Damage.

Q. Will you kindly state what in your opinion is an assignment operating as a lease or underlease within the meaning of the Landlord and Tenant Act, 1927, s. 25, defining the word "lease"? The matter is of importance as the Landlord and Tenant War Damage Act, 1939, s. 24, provides that the term of the lease has the same interpretation as that in the 1927 Act. In your issue of 24th July last, at p. 264, you refer to this fact, and there was a suggestion made that an assignment of part of the property comprised in the lease might operate as a lease in a case where rent had been apportioned and the apportioned rent paid. The case referred to decided that an assignee of a part could not give notice under a multiple lease clause. Can he properly give notice of conditional retention if he confines his notice to the particular part which has been assigned to him on the ground that it operates as a lease?

A. The suggestion to which you refer was made by the unsuccessful applicants in the case reported at p. 264. I entirely agree with the decision of His Honour Judge Forbes. The sole ground of his decision, in my view of the available report, appears to have been that the assignee was not the tenant under s. 24 of the 1939 Act for the purpose of s. 15 of the 1939 Act. In view of that decision, the question whether the assignment operated as a lease did not, in my opinion, arise in that case, although I consider that where rent is paid and accepted the assignment does operate as *a* lease, i.e., it has the effect of a lease, though, of course, not necessarily of the lease assigned. For that reason it may be regarded as the lease for the purpose of s. 4 of the 1939 Act and s. 2 of the 1941 Act, and in relation to that lease the assignee would, of course, be the tenant within s. 24 to enable him to make a conditional notice of retention.

Notes of Cases.

COURT OF APPEAL.

Way and Waller, Ltd. *v.* Ryde.

Lord Greene, M.R., MacKinnon and Goddard, L.JJ.
2nd December, 1943.

Principal and Agent—Claim for commission—Sale of hotel—Whether commission payable on sale of freehold stock and licence or on sale of shares—Letter setting out scale of commission—Accepted by conduct—Defendant's belief that this was normal scale irrelevant.

Plaintiffs' appeal from a judgment of Croom-Johnson, J.

The appellants had claimed commission on the sale of a hotel to a Mrs. Bates, alleging that the rate of commission was based on a sale of the freehold, stock and licence, and not merely of the shares in a company, although in fact the sale had taken place by transfer of shares. The defendant did not own the hotel, but he did own all the shares but one in a limited company which owned the hotel. The price of the shares was fixed at £10,000, plus an additional sum for the value of the stock. The issued capital was £10,000, and there was a mortgage on the hotel of £15,000. The plaintiffs alleged that there was a verbal agreement for remuneration on the basis of £25,000, that is, £10,000 plus the £15,000 mortgage, at a rate agreed over the telephone. There was also a letter setting out the scale of remuneration. The learned trial judge held that there was no agreement to pay the rate claimed, but only the usual or recognised scale, and that that scale was payable as on a sale of shares, and he gave judgment for the plaintiffs for £250. The plaintiffs appealed.

LORD GREENE, M.R., said that where an agent brought about a contract of sale by the purchase of property belonging to a client, subject in his hands to a mortgage, the agent was entitled to his commission, not merely on the price paid for the equity of redemption, but on the amount of the mortgage as well. In such a transaction the services rendered by the agent were to find a person who would take over the equity of redemption with the burden of the mortgage, and indemnify the client against that mortgage. Here no purchaser was found who took over the mortgage, for the simple reason that the vendor was not the mortgagor. The purchaser bought shares and nothing else. The fact that the parties referred to the defendant as "selling the hotel" had no importance, and what they had to look at was what exactly was done. As to the rate of commission, the learned judge had found that there was no verbal agreement. The learned judge had also found with regard to the letter setting out the scale of commission that the defendant did not intend to make himself liable to pay anything more than what he regarded as the usual or normal rate of commission. That was not the proper way to approach the matter. With that letter before him the defendant allowed the plaintiffs to continue, and the fact that he had in his head that this was the usual scale was neither here nor there. He agreed to it by conduct, The words used "in respect of a sale relating to leasehold or freehold hotels," were inapt to cover the sale of shares in a hotel company, but the document had to be taken and applied to the case of a sale of shares. The learned judge had given commission at what he considered to be a reasonable rate, which was considerably lower than the rate mentioned in the letter. The appeal would be allowed and the judgment varied by inserting the correct figure.

MACKINNON and GODDARD, L.JJ., agreed.

The figure of £407 10s. was agreed to be the correct figure.

COUNSEL: *J. D. Casswell*, K.C., and *M. Turner-Samuels*; *G. O. Slade*, K.C.

SOLICITORS: *H. C. Morris, Woolsey, Morris & Kennedy*; *Scadding and Bodkin.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Baku Consolidated Oilfields, Ltd.

Bennett, J. 8th November, 1943.

Companies—Winding-up—Company's property in Russia confiscated in 1920—Substratum gone.

Petition.

The company was incorporated with the object of amalgamating the business of four companies carrying on the business of getting oil at Baku. In 1920 the Russian Government confiscated the company's properties and the company then ceased to carry on business and had been occupied in endeavouring to obtain compensation from the U.S.S.R. Government. The company had an issued capital of 669,026 "A" preferred ordinary shares of £1 each, and 1,151,461 "B" ordinary shares. It had assets in this country of over £100,000. The petition for the winding-up of the company was supported by 122 shareholders who held 102,000 "A" shares and 52,000 "B" shares. It was opposed by holders of 174,000 "A" shares and 173,000 "B" shares.

BENNETT, J., said it was clear on the facts that the purpose for which the company was originally formed was gone, and that the majority of the shareholders had no right to compel a minority to embark on any other undertaking. It seemed to him the only question was whether the company should be kept alive for the purpose of putting forward its claim in respect of the confiscation of its properties, on the ground that such claim might be prejudiced by a winding-up order. Apart from that, the shareholders had a right to have divided amongst them the substantial assets of the company. It did not seem that the claim would be prejudiced by a winding-up order. It could be put forward by the liquidator instead of by the directors. He would make the usual compulsory order.

COUNSEL: *Harman*, K.C., and *H. Lightman*; *Wynn-Parry*, K.C., and *M. L. Gedge.*

SOLICITORS: *Rubenstein, Nash & Co.*; *Herbert Smith & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Kanssen *v.* Rialto (West End), Ltd.

Cohen, J. 14th December, 1943.

Company—Director—Appointment of director invalid—Director acts bona fide—De facto directors allot shares—Validity of allotment—Right to damages for wrongful allotment—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 143, *First Schedule, Table A, reg.* 88.

Witness action.

The Companies Act, 1939, s. 143, provides: "The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification"; First Schedule, Table A, reg. 88, provides: "All acts done by any meeting of the directors . . . or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director." In December, 1939, the defendant company was incorporated with a capital of £100 to take a lease of a cinema. The articles of the company incorporated Table A, with certain modifications. The arrangement was that the plaintiff and the defendant C were to run the company's business, the plaintiff being the managing director and C the chairman. Two shares were allotted on the formation of the company, one of which was transferred to the plaintiff and one to C, and they were appointed to be the first directors of the company. Owing to certain difficulties with the film renters, C considered it desirable to associate the defendant S with the business. C and S alleged that at a meeting of directors held on the 1st February, 1940, at which the plaintiff was present, S was duly appointed to be a director of the Company and C and S produced what purported to be the minutes of this meeting. The learned judge held, as a fact, that no such meeting was ever held and S was never validly appointed to be a director. S from that date purported to act as director. At a subsequent meeting of directors C and S purported to remove the plaintiff from his office of director under one of the company's articles. At a directors' meeting of the 12th April, 1940, C and S purported to allot seven shares to C and one share to S. The cinema suffered war damage in September, 1940, and was closed. The second general meeting of the company was not held in 1941, with the result that under reg. 73 of Table A, as modified by the company's articles, the plaintiff and the defendant C ceased to be directors. In March, 1942, C decided to reopen the cinema. He approached the fourth defendant M with a view to his joining the board. M agreed to do so. At a purported board meeting, held on the 30th March, 1942, C and S appointed M to be a director of the company. At that meeting ninety shares were allotted; thirty-four to M, thirty-two to S and twenty-four to C. At a subsequent board meeting S agreed to transfer seventeen of his shares to M, and this transfer was passed at a subsequent board meeting. M thus acquired fifty-one shares of the company. In these actions, which were consolidated, the plaintiff asked for a declaration that the only shares which had been validly issued were one share held by the defendant C and one share held by the plaintiff, and that the only directors of the company were the plaintiff and C. He further claimed damages against C and S, if C, S and M, or any of them, were entitled to any shares in the company other than C's one share, on the ground that by issuing such shares C and S have wrongfully procured a breach of the contract subsisting between the company and the plaintiff under s. 20 of the Companies Act, 1929.

COHEN, J., said that it was clear the plaintiff and the defendant C would have vacated office at the general meeting of 1941. That meeting was not held, therefore there were now no directors. The defendant M had acted with complete *bona fides*. It was argued for the plaintiff that that was not enough, and that the protection of s. 143 and reg. 88 of Table A would not be available (*a*) to a man who was put on inquiry and did not make adequate inquiries, or (*b*) if, although he acted *bona fide*, the directors who dealt with him were aware of the defect in their title to act with him. If M had made further inquiries his proper course would have been to ask for the minute book. This book confirmed the defendants' story. He (the learned judge) ought not to deprive M of the protection of the section and the article if he were statisfied, as he was, that, if M had made such inquiry as M might reasonably have been expected to make, he would not have discovered the defect. It was sufficient if the person seeking to rely on the section and article was himself unaware of the defect in his appointment (*Royal British Bank* v. *Turquand*, 6 E. & B. 327; *Channel Collieries Trust Limited* v. *Dover, St. Margarets and Martin Mill Light Railway Co.* [1914] 2 Ch. 506). The section and article did not justify him in holding M to be a director. M was entitled to rely on the section and article to maintain his title to the fifty-one shares in his name. He would declare that M held fifty-one shares, the plaintiff one share, and C one share, and he would direct the rectification of the register by removing the name of S and of C in respect of the other shares.

12th January, 1944.

COHEN, J., after hearing argument on the claim for damages, said the articles of association of the defendant company included reg. 88 of Table A. That article was accordingly part of the contract between the defendant company and the plaintiff. It was intended primarily for the protection of persons dealing with the company, but, in cases covered by it, the plaintiff was bound to recognise the validity of acts done by *de facto* directors. That being so, the company had not committed a breach of the articles for which the plaintiff was entitled to recover damages for the loss which he had suffered.

COUNSEL: *Raymond Jennings* and *Michael Albery*; *Wynn Parry*, K.C., and *C. R. D. Richmount*; *H. Christie*, K.C., and *H. Hillaby.*

SOLICITORS: *G. F. Wallace & Co.*; *Paisner & Co.*; *Billinghurst, Wood and Pope.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Wittke, deceased: Reynolds** *v.* **King Edward's Hospital Fund for London.**

Vaisey, J. 13th January, 1944.

Emergency legislation—Will—Bequest on protective trusts—Principal beneficiary and her husband in France—Vesting in Custodian of Enemy Property—Trustee Act, 1925 (15 *Geo.* 5, *c.* 19), *s.* 33—*Trading with the Enemy Act*, 1939 (2 & 3 *Geo.* 6, *c.* 89), *s.* 7 (1) (*a*).

Adjourned summons.

The testatrix by her will dated the 22nd June, 1940, directed her trustees to hold her residuary estate upon the following trusts: "(*a*) As to the income thereof upon protective trusts for the benefit of my sister L, provided always that my trustees shall have power from time to time to pay to my said sister the whole or any part of the capital of my residuary estate in their absolute discretion and subject thereto; (*b*) Upon trust to pay the capital and income of my residuary estate to King Edward's Hospital Fund for London." The testatrix died on the 26th October, 1941. The sister was then living in France with her husband. She had no issue, and under the Trading with the Enemy (Specified Areas) Order, 1941, applying the provisions of the Trading with the Enemy Act, 1939 to France, all her property in this country vested in the Custodian of Enemy Property. By this summons the trustees of the will asked if the income of the residue was payable during the life of the sister to the hospital, who would be entitled to the fund if the sister were dead, or was payable to the Custodian.

VAISEY, J., said that the bequest did not comply strictly with the provisions of s. 33 of the Trustee Act, 1925, because it did not expressly direct the income to be paid to the sister during her life or any less period. Reading the will as a whole, it seemed to him that an interest was given to the sister for life. The failure to define the interest might have resulted in an indefinite gift of income but for the fact that the trustees were given power to pay capital to the sister, which power was inconsistent with an indefinite gift of income as in such a case she would be entitled to call for a transfer of capital. It followed that the will contained an effective direction from the time of forfeiture to apply the income for the benefit of the sister and her husband or one of them. No distinction was to be drawn between "payable to or for the benefit of" in s. 7 (1) (*a*) of the Trading with the Enemy Act, 1939, and the words "held upon trust for the application thereof for the maintenance or support or otherwise for the benefit of" in s. 33 (1) (ii) of the Trustee Act, 1925. Accordingly, it followed that, as from the admitted forfeiture of the determinable interest given to the sister, the income was payable to the Custodian of Enemy Property during the joint lives of the sister and her husband until further order.

COUNSEL: *T. D. D. Divine; C. V. Rawlence; Danckwerts.*

SOLICITORS: *Reynolds, Sons & Gorst; E. F. Turner & Sons; Solicitor, Board of Trade.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Practice Directions.

MARKING EXHIBITS IN BUNDLES.

The Chancery Judges have given the following directions as to documents exhibited to affidavits:—

When correspondence is copied and exhibited in a bundle, the pages must be numbered consecutively and tied together with tape and the knot sealed.

When original letters, or original letters and copies of replies are exhibited as one document, they must be tied together with tape and the knot sealed, and a front leaf must be attached to the bundle stating that the bundle consists of so many original letters and so many copies.

When documents other than correspondence are exhibited in one bundle, a front leaf must be attached setting out thereon a list of the documents with dates which the bundle as exhibited contains and the bundle tied together with tape and the knot sealed.

ORIGINATING SUMMONS.

The Chancery Judges have given a practice direction as follows:—

In the case of an Originating Summons for construction or other relief, it is sufficient in an affidavit to state who are the present Executors or Trustees and the beneficiaries interested, and it is unnecessary to state (except so far as requisite for the purposes of explanation) or to prove the facts showing the devolution of the Trusteeship or the beneficial title.

This direction does not apply where the Order sought involves dealing with a fund in Court or is for the appointment of new Trustees or for the vesting of property or where the devolution of the Trusteeship or of the title is an issue raised by the Summons.

A. H. HOLLAND,
28th February, 1944. Chief Master.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

No. 175. **Aliens** (Movement Restriction) Order, Feb. 22.
No. 176. Aliens (Protected Areas) Order, Feb. 22.
E.P. 165. **Coal Distribution Order**, Feb. 15.
No. 152/L.4. **County Court, England** Procedure. The County Court (Solicitors' Remuneration) Rules, Jan. 28.
E.P. 167. **Food.** Retail Prices (Notices) Order, Feb. 17.
No. 166. **National Health Insurance** (Navy, Army and Air Force) Amendment Regulations, Jan. 25.
No. 138. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 2) Order, Feb. 15.
No. 162. **War Risks Insurance** (Commodity Insurance) (No. 1) Order, Feb. 15.

Parliamentary News.

HOUSE OF LORDS.

Disabled Persons (Employment) Bill [H.C.].
India (Attachment of States) Bill [H.L.].
Supreme Court of Judicature (Amendment) Bill [H.C.].
Read Third Time. [23rd February.
House of Commons Disqualification (Temporary Provisions) Bill [H.C.].
Read Second Time. [29th February.
Income Tax (Offices and Employments) Bill [H.C.].
Read Second Time. [29th February.

HOUSE OF COMMONS.

Anglesey County Council (Water, etc.) Bill [H.C.].
Chesterfield and Bolsover Water Bill [H.C.].
Read Second Time. [24th February.
Education Bill [H.C.].
In Committee. [25th February.
Middlesex County Council Bill [H.C.].
Read Second Time. [24th February.
Pensions (Increase) Bill [H.C.].
Read First Time. [24th February.

QUESTIONS TO MINISTERS.

VOLUNTARY LIQUIDATIONS OF COMPANIES.

Mr. GLENVIL HALL asked the President of the Board of Trade whether his attention has been called to the use of the process of voluntary liquidation, as in the case of the Powell Duffryn group of companies, to enable preference shares, which by their terms of issue are not within the redeemable category, to be paid off at par or replaced by ordinary shares; and whether he will take steps to safeguard holders against the sacrifice of their rights, or loss of capital, which may result from the use of this method.

Mr. DALTON: I have noted this case, and I have brought it to the attention of Mr. Justice Cohen's Committee on Company Law Amendment. [22nd February.

Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. BENJAMIN ORMEROD, of Beardwood, Blackburn, Lancashire, to be a Judge of County Courts, and has directed Judge Ormerod to be one of the Judges of Circuit No. 14 (Leeds, York, etc.). The appointment is dated 26th February, 1944. Mr. Ormerod was called by Lincoln's Inn in 1924.

Notes.

The Board of Trade have, with the approval of the Treasury, decided that in respect of the six months beginning 1st April, 1944, and ending 30th September, 1944, the rate of premium payable under any policy issued under the Business Scheme shall continue to be at the rate of 5s. per cent.

Wills and Bequests.

Mr. Henry Vernon Flower Barran, barrister-at-law, of Arundel, Sussex, left £135,023, with net personalty £85,771.

Mr. A. E. Savill, solicitor, of Chigwell, left £60,647, with net personalty £54,067.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1944

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice SIMONDS.
Monday, Mar. 6	Mr. Jones	Mr. Blaker	Mr. Andrews
Tuesday, „ 7	Reader	Andrews	Jones
Wednesday, „ 8	Hay	Jones	Reader
Thursday, „ 9	Farr	Reader	Hay
Friday, „ 10	Blaker	Hay	Farr
Saturday, „ 11	Andrews	Farr	Blaker

DATE.	GROUP A. Mr. Justice COHEN *Witness*	Mr. Justice VAISEY *Non-Witness*	GROUP B. Mr. Justice MORTON *Non-Witness*	Mr. Justice UTHWATT *Witness*
Monday, Mar. 6	Mr. Hay	Mr. Farr	Mr. Reader	Mr. Jones
Tuesday, „ 7	Farr	Blaker	Hay	Reader
Wednesday, „ 8	Blaker	Andrews	Farr	Hay
Thursday, „ 9	Andrews	Jones	Blaker	Farr
Friday, „ 10	Jones	Reader	Andrews	Blaker
Saturday, „ 11	Reader	Hay	Jones	Andrews